

Spahn, Gay

From: Larry Oremland [larry@oremland.com]
Sent: Thursday, August 18, 2005 5:58 PM
To: Spahn, Gay
Cc: Shackelford, Heather
Subject: Re. application serial number 10/649,978

Dear examiner Spahn,

Re. application serial number 10/649,978

I am emailing to confirm or clarify an important point in your office action of July 28, 2005. This is not a request for reconsideration. Rather it is a request for a confirmation/clarification that will enable us to answer your office action and hopefully advance the prosecution of the application.

In reviewing the part of the office action that deals with method claims 13-18, you reject claims 13-16 as allegedly anticipated by Bunch, but at page 16 of the office action you state that

"the language of "for cleaning a landscape surface that is directly exposed to the atmosphere of dirt and debris while enabling landscape rock to remain a part of the landscape surface" is a statement of intended use. As such, all the Patent Office must do is show that any reference they apply is capable of performing that intended use. It is the examiner's position that the Bunch reference is capable of performing the intended use of "cleaning a landscape surface that is directly exposed to the atmosphere". The examiner contends that even though Bunch discloses that it is an apparatus for removing debris from gravel in a fish pond, it could perform the function of cleaning a landscape surface if it were directly exposed to the atmosphere (i.e., it does not have to be in an aquatic setting, but would work equally as well on land) " (Boldface added)

To me, that statement is an unequivocal recognition that the bottom of a fish pond is **not** a landscape surface. If that is correct, I would appreciate your express confirmation (an email would be fine), so that we can seek to frame an appropriate response on that basis.

You will also recall that in the supplemental amendment that presented claims 13-18, applicant presented arguments and language from the dictionary that supports applicant's contention that the bottom of a fish pond is **not** a landscape surface. Applicant noted that

"Bunch is directed at cleaning gravel at the bottom of a pond, not to cleaning a landscape surface. The American Heritage Dictionary, Second College Edition, 1982, defines a "landscape" as "a view or vista of scenery on land" and defines "land" as "the solid ground of the earth, esp. as distinguished from the sea" (emphasis added). It is respectfully submitted that by that definition, the bottom of a pond is not a landscape surface."

Unless I have missed it, I believe that presentation has not been expressly discussed or challenged in the office action. If it has been expressly discussed or challenged in the office action, please point me to the appropriate portion of the office action.

8/23/2005

Obviously, this is an important issue to applicant, so I wanted to be sure we have no disagreements on that issue. Thus, if we have correctly understood the part of your office action that is boldfaced above, I would appreciate your email confirmation that the bottom of a fish pond is **not** a landscape surface. We hope we will then be in a position to appropriately address the remaining issues in the office action. I trust you will agree that applicant is entitled to a clear and unequivocal position of the patent and trademark office on that issue, and I look forward to your email confirmation.

On the other hand, if you feel the bottom of a fish pond is a landscape surface, applicant is entitled to a detailed explanation of your position, including any evidence that supports your position, as well as your express response to applicant's submission set forth in the supplemental amendment (If I have missed it, just point me to the appropriate portion of the office action). Applicant is also entitled to a clear and unequivocal explanation of how that is consistent with the portion of the office action that is boldfaced above.

We trust you will provide us with a prompt response, so that we can address the issues in this case, and seek to advance its prosecution.

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